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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT SEATTLE

11 UNITED STATES,

12 Plaintiff,

13 v.

14 DONNA ANDERSON, et al.,

15 Defendants.  
16

CASE NO. C05-1576JLR

ORDER

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18 This matter comes before the court on Plaintiff United States' motion for summary  
19 judgment (Dkt. # 36) against Defendant Donna Anderson. Having reviewed the papers  
20 submitted by the parties, for the following reasons, the court GRANTS the motion for  
21 summary judgment against Ms. Anderson.

22 **I. BACKGROUND**

23 This lawsuit was brought by the United States on behalf of the United States  
24 Department of Agriculture Farm Service Agency ("FSA") (formerly Farmers Home  
25 Administration) to foreclose three real estate mortgages and a security agreement  
26 executed in favor of FSA by Ms. Anderson.  
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1           On or about December 20, 2000, Ms. Anderson executed and delivered to FSA a  
2 40-year installment note in the amount of \$200,000 secured by a mortgage on real  
3 property located in Whatcom County, Washington. (Declaration of Mike Mykines (Dkt.  
4 # 37) (“Mykines Decl.”) ¶ 1.) The loan proceeds were used to repurchase the real  
5 property from a lender who had foreclosed on the property. (*Id.*) On that same day, Ms.  
6 Anderson executed and delivered to FSA a seven-year installment note in the amount of  
7 \$34,300 secured by a mortgage on the same real property in Whatcom County. (Mykines  
8 Decl. ¶ 2.) On November 29, 2000, in order to further secure the loans, Ms. Anderson  
9 executed a security agreement in favor of FSA on six pieces of farm equipment.  
10 (Mykines Decl. ¶ 4.) On or about January 2, 2001, Ms. Anderson executed and delivered  
11 to FSA a note in the amount of \$15,540 due and payable on or before January 2, 2002  
12 also secured by a mortgage on the same real property in Whatcom County. (Mykines  
13 Decl. ¶ 3.) The terms of the mortgages required, among other things, that Ms. Anderson  
14 pay promptly when due any indebtedness and pay all taxes assessed against the property.  
15 (*See* Mykines Decl., Exs. 2, 4, 6.) Further, under the terms of the agreements, if Ms.  
16 Anderson defaulted, the government could immediately declare the entire amounts of the  
17 notes payable. (*See id.*) Additionally, default under one mortgage with FSA would  
18 constitute default under all mortgages with FSA. (*See id.*)

21           Ms. Anderson defaulted on all three loans. (Mykines Decl. ¶ 6.) Ms. Anderson  
22 made periodic payments on the \$200,000 loan between January 2001 and May 2002  
23 totaling \$14,140. (*Id.*) On the \$34,300 loan, periodic monthly payments were made  
24 between January 2001 and July 2002 totaling \$6,273. (*Id.*) On the \$15,540 annual  
25 operating loan, one payment was received on July 17, 2002 in the amount of \$1,700.  
26 (*Id.*) As of May 14, 2008, no further payments from Ms. Anderson had been received.  
27 (*Id.*)  
28

1 As of May 1, 2002, Ms. Anderson's FSA loans were over 90-days delinquent.  
2 (Mykines Decl. ¶ 8.) Ms. Anderson received two copies of the "Notice of Availability of  
3 Loan Service and Debt Settlement Programs for Delinquent Farm Borrowers," one on  
4 May 1, 2002 and another on June 5, 2002. (Mykines Decl. ¶ 8, Exs. 10-13.) These  
5 notices included a summary of loan servicing options and application forms. (*See*  
6 Mykines Decl., Exs. 10, 12.) Ms. Anderson was given 60 days to notify FSA if she  
7 wanted to be considered for the programs. (*Id.*) On August 1, 2002, Ms. Anderson asked  
8 for a 60-day extension of the deadline due to injuries she had suffered in a fall two  
9 months prior and recent hospitalizations for serious injuries. (Mykines Decl., Ex. 14.)  
10 On August 19, 2002 the request was denied. (Mykines Decl., Ex. 15.)

12 On August 21, 2002, Ms. Anderson was sent "Notification of Intent to Accelerate  
13 or Continue Acceleration of Loans and Notice of Your Rights." (Mykines Decl. ¶ 11, Ex.  
14 16.) The notice explained that the acceleration was happening because of Ms.  
15 Anderson's failure to ask for or to accept the offer of primary loan service programs.  
16 (Mykines Decl., Ex. 16.) The notice contained an explanation of Ms. Anderson's appeal  
17 rights. (*See id.*) In a letter dated September 18, 2002, Ms. Anderson appealed the  
18 decision to deny her request for an extension. (*See* Mykines Decl., Ex. 17.) On  
19 November 21, 2002, the National Appeals Division for the United States Department of  
20 Agriculture issued a decision in Ms. Anderson's favor. (*See* Mykines Decl., Ex. 21.) It  
21 concluded that "[t]he agency decision to continue with the acceleration of the appellant's  
22 account was erroneous." (*Id.*)

24 On December 18, 2002, FSA sent a letter to Ms. Anderson confirming a telephone  
25 conversation where the parties agreed that Ms. Anderson would send in a completed  
26 application for loan servicing on or before January 3, 2003. (Mykines Decl., Ex. 22.) By  
27 letter dated January 3, 2003, Ms. Anderson requested another extension of time.  
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1 (Mykines Decl., Ex. 23.) Ms. Anderson's request was granted and she was given until  
2 January 24, 2003 to submit her application. (See Mykines Decl., Ex. 24.) On January  
3 24, 2003, Ms. Anderson submitted an application for direct loan assistance which FSA  
4 contends was incomplete.<sup>1</sup> (Mykines Decl. ¶ 19, Ex. 25.) FSA requested additional  
5 information from Ms. Anderson on January 28, 2003 and again on February 11, 2003.  
6 (See Mykines Decl., Exs. 26-27.) On February 21, 2003, Ms. Anderson provided  
7 additional information consisting largely of copies of documents previously provided to  
8 FSA. (See Mykines Decl., Ex. 29.) The documents included some, but not all of the  
9 requested information.  
10

11 On March 26, 2003, FSA attempted to complete Ms. Anderson's application for  
12 her using her income tax returns and other available information to develop a plan.  
13 (Mykines Decl. ¶ 21.) "FSA moved forward and performed much of the work that was  
14 required of Anderson, not because it was required of FSA by any laws or regulations, but  
15 out of compassion to help this woman keep her farm . . . FSA had taken on Anderson's  
16 responsibility, as well as performing its own role." (*Id.*) Using the information that it  
17 had, FSA ran a preliminary Debt and Loan Restructuring System ("DALR\$") analysis.  
18 (*Id.*) The DALR\$ analysis uses a number of inputs to attempt to find a combination of  
19 loan service programs that will result in a feasible plan. (*Id.*) The analysis showed no  
20 plan feasibility. (See Mykines Decl. ¶ 21, Ex. 30.)  
21

22 FSA next ordered a real estate appraisal in an attempt to determine the market  
23 value of the property and whether "a debt writedown to net recovery would result in a  
24 feasible plan." (Mykines Decl. ¶ 22.) The appraisal transmitted via letter on September  
25 2, 2003 valued the property at \$210,000 and noted that Ms. Anderson's blueberries,  
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28 <sup>1</sup>The copy of the application provided by the government is illegible. It is impossible for  
the court to determine whether or not the application is complete.

1 allegedly her main crop, were “heavily infested with brambles and other noxious weeds  
2 and are considered to be non-viable.” (Mykines Decl., Ex. 31.)

3         On October 1, 2003, FSA sent a “Notification of Adverse Decision for Primary  
4 Loan Servicing, Mediation or Meeting of Creditors and Other Options” to Ms. Anderson  
5 who received it on October 9, 2003. (Mykines Decl., Exs. 33-34.) Ms. Anderson  
6 completed and returned “Borrower’s Request for Meeting of Creditors and/or Request to  
7 Negotiate the FSA Appraisal and Acknowledgment,” checking the boxes next to a request  
8 for an independent appraisal, a request for a negotiation of the appraisal and a request  
9 that FSA schedule a meeting with Ms. Anderson’s undersecured creditors to assist her in  
10 developing a feasible plan of operation. (Mykines Decl., Ex. 35.) Ms. Anderson also  
11 attached an appraisal of the property as of April 26, 1997. (*See id.*) In response, on  
12 November 18, 2003, FSA sent Ms. Anderson a letter explaining that a creditor meeting  
13 was not appropriate in her circumstances where even if the other creditor debt was  
14 excluded from the proposed plan, a feasible plan could not be developed. (Mykines  
15 Decl., Ex. 36.) The letter also pointed out the inadequacies in the appraisal provided by  
16 Ms. Anderson. (*Id.*) She was provided with a list of FSA approved appraisers and was  
17 notified of the date by which she needed to submit a proper appraisal. (*Id.*) FSA never  
18 received an acceptable appraisal. (Mykines Decl. ¶ 28.)

19         On January 8, 2004, FSA-Whatcom County sent the file to the State Office to  
20 approve a current market value (“CMV”) buyout. (Mykines Decl. ¶ 29.) On January 26,  
21 2004, the State Office denied the request to offer a CMV buyout because the information  
22 Ms. Anderson had submitted was incomplete and out of date. (*Id.*) On February 10,  
23 2004, the State Office advised that additional information was required from Ms.  
24 Anderson to update her Farm Home Plan and that she should be given 60 days to provide  
25 the information for a complete application. (Mykines Decl., Ex. 38.)

1 On February 13, 2004, FSA sent a letter to Ms. Anderson requesting the additional  
2 financial information. (Mykines Decl., Ex. 39.) Via e-mail, March 26, 2004, Ms.  
3 Anderson requested additional time to provide the additional information citing the illness  
4 of her son and her son's wife. (Mykines Decl., Ex. 40.) FSA granted a two-week  
5 extension of the deadline. (See Mykines Decl., Ex. 41.) No financial information was  
6 received from Ms. Anderson by the deadline. (Mykines Decl. ¶ 34.)  
7

8 FSA sent a "Notification of Intent to Accelerate or Continue Acceleration of Loans  
9 and Notice of Your Rights" via certified mail and regular mail on May 6, 2004.  
10 (Mykines Decl. ¶ 35, Ex. 43.) An e-mail was also sent to Ms. Anderson about the notice.  
11 (See Mykines Decl., Ex. 45.) The notice informed Ms. Anderson that she was  
12 \$57,514.18 behind in her FSA payments and advised her of the actions she could take.  
13 (See Mykines Decl., Ex. 43.) In response, Ms. Anderson e-mailed FSA on May 6, 2006,  
14 stating that she was still caring for her adult son and needed additional time to provide the  
15 information. (Mykines Decl., Ex. 44.) FSA stated that it would not grant another  
16 extension. (*Id.*) Ms. Anderson responded again via e-mail stating that she would provide  
17 the information in 30 to 90 days depending on her son's health and requested another  
18 extension. (*Id.*) By e-mail dated May 12, 2006, her request for a reconsideration of the  
19 denial of her request for an extension was denied. (Mykines Decl., Ex. 45.)  
20

21 On July 12, 2004, FSA sent a "Notice of Acceleration of Your Debt to Farm  
22 Service Agency and Demand for Payment of That Debt" which informed Ms. Anderson  
23 that her entire indebtedness was now due and owing. (Mykines Decl., Ex. 46.)  
24

## 25 II. ANALYSIS

26 Summary judgment is appropriate if the evidence, when viewed in the light most  
27 favorable to the non-moving party, demonstrates there is no genuine issue of material  
28 fact. Fed. R. Civ. P. 56(c)); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v.*

1 *County of Los Angeles*, 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the  
2 initial burden of showing there is no material factual dispute and he or she is entitled to  
3 prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets its  
4 burden, the nonmoving party must go beyond the pleadings and identify facts which show  
5 a genuine issue for trial. *Cline v. Indus. Maint. Eng'g. & Contracting Co.*, 200 F.3d  
6 1223, 1229 (9th Cir. 2000).

7  
8 Ms. Anderson does not contest that she signed the promissory notes or that she  
9 failed to meet the required payments. Instead she argues that summary judgment is  
10 inappropriate because the documents in support of summary judgment are incomplete,  
11 illegible and inadmissible. (Resp. (Dkt. # 42) at 2.) She also argues that there are issues  
12 of fact regarding: (1) FSA's claim that Ms. Anderson did not provide a complete  
13 application in February 2002; (2) FSA's October 1, 2002 determination that Ms.  
14 Anderson was ineligible for Primary Loan Servicing because of amounts owed to her  
15 creditors other than FSA; (3) FSA's failure to send a notice of appeal rights regarding the  
16 determination that amounts owed to her creditors other than FSA rendered her ineligible;  
17 (4) whether FSA complied with the statutory requirement for notice of ineligibility to Ms.  
18 Anderson in regards to FSA's October 2002 determination of ineligibility; (5) whether  
19 FSA properly denied Ms. Anderson's requests for extensions of time, when it requested  
20 supplemental information in 2003; and (6) whether FSA properly provided notice to Ms.  
21 Anderson of her right to appeal the May 6, 2004 determination by FSA that it would  
22 accelerate her loans. (*See id.*)

#### 23 24 25 **A. Incomplete/Illegible Documents**

26 Ms. Anderson first argues that summary judgment is inappropriate because the  
27 documents in support of the motion are "incomplete, illegible and inadmissible." In her  
28 declaration Ms. Anderson points out that Exhibit 25 is illegible. (Declaration of Donna

1 Anderson (“Anderson Decl.”) at 3.) The court agrees; however, the document provides  
2 background information on the dispute between the parties and the court finds that it is  
3 not necessary for it to review the contents of Exhibit 25 for it to make a decision  
4 regarding this dispute. Referencing Exhibit 25, Ms. Anderson contends that FSA did not  
5 attach complete copies of the information that she submitted to FSA. (*Id.*) Ms. Anderson  
6 attached pages to her declaration that she claims were omitted in FSA’s submission to the  
7 court. (*See* Anderson Decl., Ex. A.) Ms. Anderson contends that “additional materials”  
8 are also missing but she does not identify what those missing materials are, how they are  
9 relevant to the issues before the court, and does not attach the alleged “missing materials”  
10 to her declaration. (*See* Anderson Decl. at 3.) The government was under no obligation  
11 to attach complete copies of every document. If Ms. Anderson believed that documents  
12 necessary for a complete understanding of the issues presented in FSA’s motion were  
13 either missing or incomplete, she should have attached them to her declaration.  
14

15 **B. Alleged Procedural Inadequacies**  
16

17 Before FSA can accelerate a Farm Loan Program loan or take any other collection  
18 action, it “shall provide notice by certified mail to each borrower who is at least 90 days  
19 past due on the payment of principal or interest on a loan.” 7 U.S.C. § 1981d(a). The  
20 notice must:

- 21 (1) include a summary of all primary loan service programs, preservation loan  
22 service programs, debt settlement programs, and appeal procedures, including  
23 the eligibility criteria, and terms and conditions of such programs and  
24 procedures;
- 25 (2) include a summary of the manner in which the borrower may apply, and be  
26 considered, for all such programs . . . ;
- 27 (3) advise the borrower regarding all filing requirements and any deadlines that  
28 must be met for requesting loan servicing;
- (4) provide any relevant forms, including applicable response forms;



1 (5) advise the borrower that a copy of regulations is available on request; and

2 (6) be designed to be readable and understandable by the borrower.

3 7 U.S.C. § 1981d(b). FSA shall also “consider a farmer program borrower for all loan  
4 service programs if, within 60 days after receipt of the notice required in this section or,  
5 in extraordinary circumstances as determined by the applicable State director, after the  
6 60-day period, the borrower requests such consideration in writing. In considering a  
7 borrower for loan service programs, the Secretary shall place the highest priority on the  
8 preservation of the borrower’s farming operations.” 7 U.S.C. § 1981d(e). Normally, if a  
9 borrower asks for an extension of time, such extension is not to exceed 30 days. *See* 7  
10 C.F.R. § 1951.916(b).

12 7 U.S.C. § 2001(a) entitled “Debt restructuring and loan servicing,” provides that  
13 the

14 Secretary shall modify delinquent farmer program loans made or insured . . . to  
15 the maximum extent possible (1) to avoid losses to the Secretary on such loans,  
16 with priority consideration being placed on writing-down the loan principal and  
17 interest . . . , whenever these procedures would facilitate keeping the borrower  
18 on the farm or ranch, or otherwise through the use of primary loan service  
programs as provided in this section; and (2) to ensure that borrowers are able to  
continue farming or ranching operations.

19 In order to be eligible to obtain assistance “the borrower must present a preliminary plan  
20 to the Secretary that contains reasonable assumptions that demonstrate that the borrower  
21 will be able to--(A) meet the necessary family living and farm operating expenses; and  
22 (B) service all debts, including those of the loans restructured.” 7 U.S.C. § 2001(b)(3)  
23 Additionally, “the loan, if restructured, must result in a net recovery to the Federal  
24 Government, during the term of the loan as restructured, that would be more than or equal  
25 to the net recovery to the Federal Government from an involuntary liquidation or  
26 foreclosure on the property securing the loan.” 7 U.S.C. § 2001(b)(4). Foreclosure or  
27 other similar actions cannot be taken to liquidate any loan determined to be ineligible for  
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1 restructuring by the Secretary until the borrower has been given an opportunity to appeal  
2 the decision and if an appeal is taken, until the appeals process is completed and a  
3 determination has been made that the loan is ineligible for restructuring. *See* 7 U.S.C. §  
4 2001(g).

5         Ms. Anderson’s arguments regarding alleged procedural inadequacies should have  
6 been raised in an appeal of FSA’s decision finding her loan ineligible for restructuring.  
7 Therefore, the first issue that the court will address is whether FSA properly provided  
8 Ms. Anderson with notice of her appeal rights when it determined that it would accelerate  
9 her loans by notice dated May 6, 2004. Ms. Anderson submits a sworn declaration that  
10 the “correspondence dated May 6, 2004, was never received by me . . . . The lack of a  
11 proper record of mailing is not surprising to me since I know I never received this  
12 notice.” (Anderson Decl. at 7-8.) In reference to a series of e-mails between Ms.  
13 Anderson and FSA regarding the notice, Ms. Anderson declares: “In none of th[o]se  
14 emails does [FSA] advise me clearly of the fact that the FSA has now determined to  
15 accelerate my loan and foreclose . . . .” (Anderson Decl. at 7.) She contends that FSA  
16 failed to comply with 7 C.F.R. § 1951.907 which provides: “In those instances where the  
17 applicable notice is sent certified mail, and the certified mail is not accepted by the  
18 borrower, the County Supervisor will immediately send the documents from the certified  
19 mail package to the borrower’s last known address, first class mail.” In response the  
20 government argues that Ms. Anderson does not dispute the fact that she was sent the May  
21 6, 2004 notice by first-class mail or that she had e-mail correspondence with FSA on the  
22 date the notice was sent regarding the notice. (Reply (Dkt. # 43) at 3.)

23         The court finds that FSA complied with the law and regulations in providing Ms.  
24 Anderson notice, in the May 6, 2004 letter, of its intent to accelerate her loans. Mark  
25 Turner, the individual at FSA responsible for sending the notice submitted a declaration  
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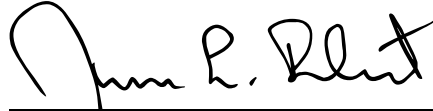
1 stating that he sent, “by *both* regular and certified mail, an adverse decision, expressly  
2 providing her account would be accelerated due to her failure to submit information  
3 necessary to determine the servicing options available and whether a feasible plan could  
4 be developed, and giving her 30 days to appeal my decision to NAD.” (Declaration of  
5 Mark Turner (Dkt. # 44) (“Turner Decl.”) ¶ 24.) The copy of the notice sent by certified  
6 mail was returned as unclaimed. (Turner Decl. ¶ 25.) The copy of the letter sent by first  
7 class mail was not returned to Mr. Turner. (*Id.*) Although Mr. Turner did not wait for  
8 the certified letter to be returned before sending the notice via regular mail, pursuant to 7  
9 C.F.R. § 1951.07, Ms. Anderson cannot point to any prejudice she suffered as a result of  
10 the contemporaneous mailing. At the most, Ms. Anderson would have been given a few  
11 extra weeks to respond to the notice. She does not argue that she would have broken her  
12 pattern of continually asking for extensions by actually using that time productively and  
13 submitting a notice of appeal. By this time, Ms. Anderson had been given almost two  
14 years to submit a complete application. Additionally, even though not required and not in  
15 and of itself enough to provide notice, FSA provided notice of its intent to accelerate by  
16 e-mail. (*See* Mykines Decl., Ex. 45.) True to form, Ms. Anderson asked for additional  
17 time to respond to FSA’s requests and purported to set her own timetable for when she  
18 would respond. (*Id.*) At this point FSA had fulfilled its obligation to assist Ms. Anderson  
19 in retaining her farm.

22       Having determined that FSA properly provided notice of its intent to accelerate her  
23 loans, the court need not address Ms. Anderson’s remaining arguments which all relate to  
24 actions FSA took leading up to its May 6, 2004 notice. These are arguments that should  
25 have been, but were not, raised in an administrative appeal of FSA’s decision. Even if  
26 the court were required to address those arguments, which it is not, the court finds that  
27 they are without merit.

1 **III. CONCLUSION**

2 For the foregoing reasons the court GRANTS the United States' motion for  
3 summary judgment against Ms. Anderson.

4 DATED this 6th day of August, 2008.

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7 JAMES L. ROBART  
8 United States District Judge  
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